IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.649 OF 2005
IN
WRIT PETITION NO.879 OF 2005

Prabhakar S. Thakur ..Appellant.

Vs.

Mahrashtra Housing And
Area Development Authority,
Mumbai & Ors. ..Respondents.

Ms.B.P.Jakhade for the Appellant.

Ms.P.D.Anklesaria, Special Senior Counsel with Ms.S. Shreedharan, A.G.P. for the Respondents State.

CORAM: DR.S.RADHAKRISHNAN AND
S.J.VAZIFDAR, JJ.

DATED: 7TH MARCH, 2006

ORAL JUDGMENT : (Per Dr.S.Radhakrishnan, J.)

1. By this Appeal, the Appellant is challenging the judgment and order dated 17.12.2004 passed by the learned Single Judge, allowing the Writ Petition filed by Respondent No.1 State of Maharashtra and Respondent No.2 MHADA.

2. The brief facts are that the Petitioner, who is a retired employee of MHADA, had a grievance that the Appellant is entitled to pensionary benefits and had filed the petition before the Lok Nyayalaya, which is

constituted under section 19 of The Legal Services Authorities Act, 1987, hereinafter referred to as "the said Act" for brevity sake. The said Lok Nyayalaya by its order dated 7.8.2004 had directed the State Government and MHADA to take a decision with regard to implementation of the pension scheme with regard to the Petitioner and also the other persons who are similarly situated. The State Government and MHADA were directed to communicate their decision before the next date.

3. Ultimately, when the matter finally came up before the said Lok Nyayalaya on 4.9.2004, the learned A.G.P. appearing on behalf of the State of Maharashtra again sought time. The Lok Nyayalaya had refused to grant any further adjournment and proceeded to decide the dispute on merit as indicated in paragraph 4 of the said order. The Lok Nyayalaya concluded that the Government and MHADA are bound to grant the pensionary benefit in view of the resolution passed by MHADA dated 4.6.1991. In the said paragraph 4 the Lok Nyayalaya has concluded that the Petitioner and such similarly situated persons are entitled to pensionary benefits and finally the Lok Nyayalaya has directed as follows :

> "If they are governed by all other Rules of MCSR, it is difficult to appreciate as to why they should not be governed by Pension Rules and get other retirement benefits as per MCSR despite the earlier decision to that effect. Therefore we are giving direction to the Government and MHADA to implement their own decisions taken earlier and to grant pensionary benefits to the Petitioners and the persons falling in the same category, in accordance with the resolution of MHADA No.1923 dated 4.6.1991.
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> "We also direct the Government that as a result of the decision in accordance with this order, all the persons entitled to the pension and retirement benefits should get their payments on or before 30th November, 2004 and in case there is further delay, the Petitioners have liberty to approach this forum."

4. Aggrieved by the aforesaid order of Lok Nyayalaya dated 4.9.92004, the State of Maharashtra and MHADA had filed Writ Petition No.879 of 2005 challenging the same. The learned Single Judge at the stage of admission, disposed of the above petition, finally holding that the said Lok Nyayalaya did not have jurisdiction to decide the matter on merits and the Lok Nyayalaya had jurisdiction only to deal with the matters wherein there is a compromise or a settlement.

5. Ultimately, the learned Single Judge considered

the provisions of sections 19 and 20 of The Legal Services Authorities Act, 1987 and, after referring the judgment of the Supreme Court in *State of Punjab & Ors. v. Phulan Rani & Ors., (2004) 7 Supreme Court Cases, 555* clearly came to the conclusion that the Lok Nyayalaya, which is constituted under section 19 of the said Act did not have any jurisdiction whatsoever to deal with a dispute on merits and the said Lok Nyayalaya had jurisdiction only to pass an order based on mutual compromise or settlement. There is no dispute that in the present case there is no compromise or settlement between the parties, and the claim is strongly disputed.

6. Aggrieved by the aforesaid order of the learned Single Judge, the present Appeal has been filed. The learned counsel appearing on behalf of the Appellant brought to our attention provisions of sections 22B and 22C, clause 22C(7), (8), 22D and 22E. Section 22C, clause (7) reads as under :

> "22C.(7) When a Permanent Lok Adalat, in the aforesaid conciliation proceedings, is of opinion that there exist elements of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give to the parties concerned for their

> observations and in case the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement agreement and the Permanent Lok Adalat shall pass an award in terms thereof and furnish a copy of the same to each of the parties concerned.
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> (8) Where the parties fail to reach at an agreement under sub-section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, **decide** the dispute." (emphasis supplied)

Section 22D reads as under :

> "**22D. Procedure of Permanent Lok Adalat.-**The Permanent Lok Adalat shall, while conducting conciliation proceedings or deciding a dispute on merit under this Act, be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice, and shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) and the Indian Evidence act, 1872 (1 of 1872)."

Section 22E reads as under :

> "**22E. Award of Permanent Lok Adalat to be final.-**(1) Every award of the Permanent Lok Adalat under this Act made either on merit or in terms of a settlement agreement shall be final and binding on all the parties thereto and on persons claiming under them.

7. The contention of the learned counsel for the Appellant is that the aforesaid Lok Nyayalaya had jurisdiction to decide the matter even on merit and

pass an appropriate award and the learned counsel contended that as both the Respondents had declined to compromise or settle, the Lok Adalat had proceeded to decide the matter on merit and passed the order dated 4.9.2004, it should be construed as an award under section 22E.

8. The learned counsel for the Appellant also contended that the aforesaid judgment of the Hon'ble Supreme Court in *State of Punjab & Ors. v. Phulan Rani & Ors.*, does not apply in the instant case inasmuch as the aforesaid order has been passed by the Lok Nyayalaya under section 22(8). Under these circumstances, the learned counsel for the Appellant sought to contend that the order passed by the learned Single Judge is erroneous since the Lok Nyayalaya had the jurisdiction even to decide the case on merits even if thee was no compromise or settlement.

9. Ms.Anklesaria, the learned Special Senior Counsel, appearing on behalf of the Respondents, pointed out that the above Lok Nyayalaya has been specifically constituted under section 19 of the Legal Services Authorities Act, 1987 by a notification dated 25.2.2004 issued by the Law and

Judiciary Department, Mantralaya and the notification clearly indicates that the said Lok Adalat has been constituted in pursuance of the provisions of section 19 of the Legal Services Authorities Act, 1987. The learned counsel has brought to our notice, provisions of clause 2 said notification, which reads as under :

> "2(C) The Pension Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement, as regards pension and/or gratuity, between the parties to a dispute in respect of any case pending before any Authority, Tribunal or Court with respect to the employees, of -
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> (i) State Government;
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> (ii) Local Self Government and;
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> (iii) State Government Corporations.
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> Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under law."

Clasue 5(d) of the said notification reads as under :

> "5(d). The High Court Legal Services Committee shall request the Registrar, High Court, Bombay to issue directions to the concerned departments to sort out all the cases pertaining to pension and with the co-ordination of the High Court Legal Services Committee issue notices to the parties calling for their willingness to place their matter before Permanent Lok Adalat. A list

> shall be prepared of matters, which are to be placed before the Permanent and Continuous Pension Lok Adalat."

10. The learned Special counsel contended that the aforesaid Lok Adalat has been constituted only to deal with the pending cases and that too, only to determine and to arrive at a compromise or settlement, as regards pension and/or gratuity, between the parties to a dispute in respect of any case pending before any Authority, Tribunal or Court. Therefore, the contention of the learned Senior counsel for the Respondents is that, admittedly, in the present case, no case is pending before any Authority, Tribunal or Court and the application was made before the Lok Adalat, before the Petitioner filing any case before any Authority, Tribunal or Court. Therefore, the contention of the learned Senior counsel is that the above notification dated 25th February, 2004, covers cases only under section 19(5)(i) of the said Act.

11. The learned counsel contended that there is no power conferred on the said Lok Adalat to determine any matter and decide any matter or any dispute on merits, independent of compromise or settlement. The learned counsel also referred to clause 5(d) of the

notification dated 25.2.2004 and contended that the said clause also clearly indicates that the Registrar of this Court has been directed to issue directions to concerned departments to sort out all the cases pertaining to pension and also to issue notices to the parties calling for their willingness to have their matters placed before the Permanent Lok Adalat. Ms.Anklesaria's contention is that even the aforesaid clause 5(d) makes it clear that all pending cases where the parties are willing, then the said cases can be referred to Permanent Lok Adalat, but the Lok Adalat cannot decide the dispute on merits.

12. Ms.Anklesaria, the learned Special Senior Counsel also brought to our notice the judgment of the Karnataka High Court in *The Commissioner, Karnataka State Public Instruction (Education), Bangalore & Ors. v. Nirupadi Virbhadrappa Shiva Simpi, AIR 2001 Karnataka, 504*, wherein, the learned Single Judge while interpreting section 20 of the said Act has clearly held that the Lok Adalat would not have jurisdiction to determine any dispute and the Lok Adalat cannot entertain, without the consent of the other side. Even section 19, sub-clause (5) has been interpreted to mean that Lok Adalat to determine and arrive at a compromise or settlement.

To put it in other words, that the Lok Adalat cannot decide a dispute where one of the parties is not amenable or agreeable to a compromise or settlement.

13. Therefore, the learned counsel also brought to our notice, provisions of section 22B and pointed out that Chapter VIA was introduced in The Legal Services Authorities Act, 1987 by an amendment with effect from 11.6.2002. The said Chapter contemplates pre-litigation conciliation and settlement. Section 22B contemplates establishment of Permanent Lok Adalat, which can be constituted by issuance of a notification under section 22B. Section 22C, clauses (7) and (8) make it clear that in the even if the said Permanent Lok Adalat is unable to find out a settlement or compromise between the parties, the said Lok Adalat has been empowered to decide the matter on merits and section 22E makes it clear that the said Lok Adalat can decide the dispute either on merit or in terms of the settlement agreement.

14. Ms.Anklesaria, the learned counsel therefore contended that, in fact, the scope and jurisdiction of the Permanent Lok Adalat under Chapter VIA is much wider, that it could entertain and try and find a solution and arrive at a settlement and pass an order

or even if the same fails, it can still proceed further and decide the case on merits and pass an award.

15. Mr.Anklesaria pointed out that in the instant case, there is absolutely no compromise or settlement and right from the beginning and the Respondents had informed the Lok Nyayalaya that they were not agreeable to settlement or compromise in the matter and, if that be so, the Lok Nyayalaya constituted under section 19, did not have jurisdiction to go into the merits and decide the claim of the Petitioner. Hence, the learned counsel for the Respondents submitted that there is no error in the judgment of the learned Single Judge making the Rule absolute, allowing the Petition filed by the Respondents.

16. Having heard both the learned counsel at length and after considering all the legal provisions and the judgments, the undisputed fact in the present case is that the present Petitioner had approached the Lok Nyayalaya at a stage when no case was pending before any Authority, Tribunal or Court for settlement of his pension claim. There is also no dispute that the Lok Nyayalaya, which had entertained

the claim of the Appellant, was constituted under section 19 of The Legal Services Authorities Act, 1987, only with regard to pending cases as per section 19(5)(i) of the said Act.

17. In the light of the above, if we analyse the provisions of sections 19 and 20, it is explicitly clear that the aforesaid constituted Lok Nyayalaya can entertain the cases which are pending before any Authority, Tribunal or Court. However, under section 19(5)(ii), it could be argued that a matter which had not come before any Authority, Tribunal or Court, can also be brought before the Lok Adalat.

Section 19(5)(ii) reads as under :

> "19(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of-
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> (i) .....
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> (ii) any matter which is falling within the jurisdiction of, and is not brought before,
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> any court for which the Lok Adalat is organised :
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> Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law."

18. However, having regard to the notification issued by the Law and Judiciary Department dated 25.2.2004, it has been expressly made clear that the said Lok Nyayalaya has been constituted only for the purpose of determining and arriving at a compromise or settlement with regard to cases pending before any Authority, Tribunal or Court. Therefore, the present Lok Nyayalaya obviously could not have entertained the claim, wherein no dispute was pending before any Authority, Tribunal or Court.

19. On this issue, whether such a Lok Nyayalaya constituted under section 19, could decide the matter on its merits, the judgment of the Hon'ble Supreme Court in *State of Punjab & Ors. v. Phulan Rani & Ors*., is very clear, wherein, paragraph 7 reads as under :

> "**7.** The specific language used in sub-section (3) of Section 20 makes it clear that the Lok Adalat can dispose of a matter by way of a compromise or settlement between the parties. Two crucial terms in sub-sections (3) and (5) of Section 20 are "compromise" and "settlement". The former expression means settlement of differences by mutual concessions. It is an agreement reached by adjustment of conflicting or opposing claims by reciprocal modification of demands. As per Termes de la Ley,

> "compromise is a mutual promise of two or more parties that are at controversy". As per Bouvier it is "an agreement between two or more persons, who, to avoid a law suit, amicably settle their differences, on such terms as they can agree upon". The word "compromise" implies some element of accommodation on each side. It is not apt to describe total surrender. (See *N.F.U. Development Trust Ltd., Re.*) A compromise is always bilateral and means mutual adjustment. "Settlement" is termination of legal proceedings by mutual consent. The case at hand did not involve compromise or settlement and could not have been disposed of by the Lok Adalat. If no compromise or settlement is or could be arrived at, no order can be passed by the Lok Adalat. Therefore, the disposal of Writ Petition No.13555 of 1994 filed by Respondent 1 is clearly impermissible."

20. In the present case, the arguments of the learned counsel for the Appellant that the present Lok Nyayalaya has been constituted under section 22B is totally baseless, and, in fact, the learned counsel who had earlier appeared on behalf of the Appellant before the learned Single Judge, had rightly conceded before the learned Single Judge that the original Respondent was not canvasing any argument under section 22. The learned counsel was unable to produce before us any notification issued under section 22B of the Legal Services Authorities Act, 1987 and as per the notification dated 25th February, 2004 issued under section 19(1) of the

Legal Services Authorities Act, 1987 constituting the Lok Nyayalaya which could entertain only matters pending before any Authority, Tribunal or Court, wherein there is a compromise or a settlement. Under the aforesaid facts and circumstances, we find no merit in the above Appeal, hence the Appeal stands dismissed, however, with no order as to costs.

21. We are informed, across the bar, that there are a number of matters pending before the Lok Nyayalaya, wherein, there is no dispute pending before any Authority, Tribunal or Court. Obviously, the same cannot be entertained by the present Lok Nyayalaya.

22. The preamble of the said Act, reads as under :

> "*An Act to constitute legal services authorities to provide free and competent legal service to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organise Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.*"

23. It is high time, appropriate Pension Lok Adalat is constituted under section 19 of the said Act to deal with matters, not pending before any Authority,

Tribunal or Court, for compromise or settlement. Similarly, an appropriate Pension Lok Adalat be also constituted under section 22B of the said Act. Even the present Pension Lok Adalat can be appropriately empowered to deal with cases covered under section 19(5)(ii) and section 22B of the said Act, especially when Pension Lok Adalat deals with the pension claims of aged retired employees who are in dire need of money.

(DR.S.RADHAKRISHNAN, J.)

(S.J. VAZIFDAR, J.)